

SENATE BILL REPORT

SB 5947

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, February 27, 2007

Title: An act relating to creating a business and occupation tax credit against state and federal payroll taxes paid by restaurateurs on employee tips.

Brief Description: Creating a business and occupation tax credit against state and federal payroll taxes paid on employee tips by restaurant owners.

Sponsors: Senators Murray, Zarelli, Marr, Shin, Schoesler and Holmquist.

Brief History:

Committee Activity: Labor, Commerce, Research & Development: 2/27/07 [DPS-WM].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: That Substitute Senate Bill No. 5947 be substituted therefor, and the substitute bill do pass and be referred to Committee on Ways & Means.

Signed by Senators Kohl-Welles, Chair; Keiser, Vice Chair; Clements, Ranking Minority Member; Franklin, Hewitt, Holmquist, Murray and Prentice.

Staff: Sherry McNamara (786-7402)

Background: Restaurants in Washington are subject to the Business and Occupation (B&O) tax. This tax is a gross receipts tax and applies to the "gross amount" or "gross income" of the business. The tax rate and classification vary depending upon the specific business activity.

Employees working in restaurants regularly and customarily receive tips from patrons. Tips are considered wages for the purpose of payment of benefits and contributions. Restaurants pay state and federal payroll taxes for unemployed and injured workers.

Summary of Bill: The bill as referred to committee not considered.

Summary of Proposed Substitute (Labor, Commerce, Research & Development): This bill provides for a B&O tax credit for state and federal payroll taxes paid by restaurants on employee tips.

The credit amount is the total amount of contributions or taxes paid to the state and federal government on tip income that is included in wages. This includes all of the following:

- the amount of taxes paid by the employer to any Washington taxing authority on tip income that is included in wages;

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

- taxes paid by the employer to the United States Treasury for the employer's Federal Insurance Contributions Act (FICA) tax obligations; and
- taxes paid by the employer to the United States Treasury for the employer's Federal Unemployment Tax Act (FUTA) tax obligations.

The credits provided may be claimed against taxes due for the calendar year in which the employer pays the items included in the credit. The credit amount cannot exceed the tax due and refunds may not be given in place of credits. Credits may not be carried over to subsequent calendar years or carried backward to previous calendar years.

Fifty percent of the credit amount must be utilized for health care benefits for the employees, additional wages for non-tip earning employees, or other increased employee benefits.

EFFECT OF CHANGES MADE BY RECOMMENDED SUBSTITUTE AS PASSED COMMITTEE (Labor, Commerce, Research & Development): An employer who takes a credit under this section must annually report to the Department of Revenue (DOR), in the form and manner prescribed by DOR, information providing an itemized listing of the dollar amounts utilized for health care benefits, additional wages for any non-tip employees or increased benefits, such as employee meals and paid sick leave.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony: PRO: The wages for "back of the house" restaurant staff such as the chefs, prep-cooks, and dishwashers have not been increasing over the past couple of years. In the restaurant business, the servers receive tips to augment their wages. The server's tip income cannot be shared with the "back of the house" staff. This bill would give the restaurant employer the ability to reward non-tipped employees. Restaurant staff work hard and there currently isn't a way to compensate the non-tipped employees.

Persons Testifying: PRO: Senator Murray, prime sponsor; Trent House, Washington Restaurant Association; Cameron Laborde-Zank, Daniel's Broiler; Washington Restaurant Association.